

Government Oversight Committee –February 13, 2007
Issues facing the Iowa Civil Rights Commission (ICRC)

1. **Restore lost funding for ICRC.** The state appropriation is approximately the same level as 15 years ago (1991). State and federal reductions compromise the ability of the agency to deliver on its mission to receive and fairly investigate claims of discrimination.

Iowa can become a state known for its welcome, safe environment for diverse populations. Without the Civil Rights Commission's system of justice, Iowa would lose the value of contributions of all members of society and lose the image as a welcoming, safe state, ready for the diverse future. ICRC, in partnership with local commissions, works to prevent and resolve discrimination based on age, disability, sex, race, national origin, and family or marital status. Our state and local civil and human rights agencies provide cost effective and accessible investigatory processes that resolve discrimination complaints in the areas of employment, education, public services, housing, credit, and health care. Complainants can file with or without an attorney; there are no costs for filing. To prevent discrimination, ICRC offers training, education, and community outreach.

To enhance safety and promote equality and justice, and to attract and sustain a pool of highly skilled workers, ICRC and local commissions investigate and resolve civil rights complaints. ICRC combines regulatory resolution of 2000 discrimination complaints per year, with education and outreach programs to further voluntary compliance.

Safe and attractive living and work environments extend to being free from discrimination and free from loss of dignity, humanity and economic loss.

- Due to cuts over the past 5 years, which have reduced our budget to a 1991 level, and staff levels nearly 40% lower than in 2000, staffing is at a critically low level. On a proportionate basis, possibly no other agency has experienced the impact of layoffs and furloughs. Staff levels are actually at 1988 levels, down to a total staff level of 25, as opposed to a level of 38, (in 2000). Backlogs will grow again. While state appropriations have marginally increased the past two years, federal reductions over the past three years have compounded the ability of the agency to receive and fairly investigate claims of discrimination.
- Formal and informal standards and protocol have been instituted to better assure comparable processing of cases across the agency. With some creative efforts, we are still going to try to fill long time vacancies. Recently, we had to re-structure our offices, eliminating one position in order to fill another position.. Without additional funding, additional staff will be laid off in FY08. Proportionately speaking, I believe no other agency has had to furlough over 20% of its staff (2005) or lay off 10% of its staff (2005-06).
- **Funding request** To make up for past cuts, to meet escalating federal requirements, declining federal dollars, and increasing numbers of stakeholder groups, ICRC is asking for \$250,000 to help restore its budget and service levels. State funding was \$1,223,000 in FY00 and \$1,076,000 for current FY 07—not factoring in inflation. In addition to state cuts, projected declines in federal funds for FY07 may mean an additional loss of \$200,000—the final figure is unknown, since contracts have yet to be finalized.
 - Funding will allow for restoring (filling vacancies) of at least three to four positions and upgrading equipment to 21st century technology. Modern IT equipment, which digitally records and stores investigatory interviews will provide for greater efficiency and accountability.

Working towards the future. --An effective discrimination enforcement agency helps Iowa increase the pool of qualified workers, in turn insuring Iowa receives as broad based economic contributions as possible from all sectors of society. To attract and sustain a pool of highly skilled workers, our agency assists in educating, training and recruiting a culturally competent workforce. Our agency educates business and industry on discrimination laws and diversity issues to prevent problems and provide a more welcoming economic climate.

- Civil rights enforcement and education further insure society receives full benefits from a diverse, creative workforce.
- College graduates and highly skilled workers are attracted to diverse communities. ICRC plays a role in the creation of safe, diverse, attractive and inclusive communities by enforcing equal opportunity in employment, housing, education, credit, health care and public services for all Iowans.
- To insure Iowa benefits from the contributions of all society, ICRC works to insure barriers are torn down which prevent Iowans from receiving public education or employment opportunities that are being illegally denied

Cost savings. -- To parties on both sides of our process, we resolve allegations and complaints of discrimination, involving the public and private sectors, in rural and urban Iowa. The process is less expensive than the costlier and time-consuming judicial system. Compared to the out-of-pocket costs of tens of thousands of dollars per court case, (plus the costs of time-consuming, judicial resolutions) we offer a cost efficient system for both complainant and the business, employer, or landlord respondents. Our measures support this goal and seek to achieve rapid resolution.

Past efforts to save resources. -- To stretch resources, ICRC partners with local commissions across the state through 12 sub-contracts. To save resources, ICRC has utilized layoffs, furloughs, and grants; last year, ICRC entered into contracts with the Department of Public Health to meet staffing needs. Recently, ICRC entered into an innovative contract with a private, not for profit (Iowa Legal Aid) to assist in intake (filtering out non meritorious cases, while assisting in filing of cases that may have merit) and alternative dispute resolution (using volunteer attorneys to mediate cases, prior to any public hearing or court action). These two efforts may be unique in this country.

Federal funding and mandates. -- The Federal Department of Housing and Urban Development (HUD) and the U.S. Equal Employment Opportunity Commission (EEOC) require ICRC to investigate and resolve discrimination in housing and employment. State law requires investigation of discrimination in education, credit, and public accommodations, in addition to housing and employment.

Our goal to be a welcoming state is jeopardized if we cannot respond to requests for training from stakeholder groups and business and industry on diversity and discrimination. Our goal to be a state that understands and appreciates diversity will be compromised if we cannot quickly process, mediate and investigate cases.

2. **Need for subpoena power—see attached position statement (bill is in the Senate State Govt. Committee)**
3. **The question of assuming jurisdiction over Iowans in the criminal justice system —first fully fund our existing efforts and mandates.**

Iowa Department of Justice Civil Rights Division

Memo

To: Corlis Moody, (former) Executive Director
From: Rick Autry (former Asst. A.G. for Civil Rights)
Re: Subpoena Power
Date: November, 2003

Again this year the Iowa Civil Rights Commission is seeking legislation to empower the Commission to subpoena witness at the investigation stage. It is hoped that all parties will benefit from this power by allowing the Commission to compel the testimony of third parties who "don't want to get involved". Currently the evidence these parties could provide must be guessed at by indirect and contorted means. This means greater expense for everyone.

In the past some question has arisen about whether this is an unusual power for an investigative agency to have. I set forth below of summary of just some of the agencies whom I know enjoy the power to subpoena witnesses at investigation.

STATE

Inspections and Appeals - A great deal of the investigations conducted at the state level are done by department of inspections and appeals. This large investigative agency is empowered to "[i]ssue subpoenas and distress warrants, administer oaths, and take depositions in connection with audits, appeals, investigations and hearings conducted by the department." Iowa Code §10A.104(6) (1999)(emphasis added).

This includes investigations relating to the internal affairs of all state agencies, the food stamp programs, the medical assistance program, the nursing home ombudsman (elder affairs), beer and liquor licenses, the operation of all health care facilities and all regulated professions and occupations with the exception of the nurses, dentists, doctors and pharmacists. Iowa Code §§10A.402; see also §147.87-88 (1999). "Regulated professions" is a very broad category and includes:

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|----------------------------|-----------------------------------|
| 1. Physician assistant | 8. Speech Pathology |
| 2. Psychology | 9. Cosmetology |
| 3. Podiatry | 10. Barbers |
| 4. Chiropractic | 11. Mortuary science |
| 5. Physical therapists | 12. Mental health counselors |
| 6. Occupational therapists | 13. Social workers |
| 7. Optometry | 14. Martial and family counselors |

Iowa code §147.13 (1999). And this is just the "health related" regulated professions and does not include professions regulated for safety and welfare, for example, the educational professions, architects, engineers, private investigators etc..

Iowa Department of Personnel - This department conducts investigations related to state employment practices including sexual harassment in state agencies. Iowa Code §19B.12(4). The Department of Personnel is specifically authorized to "administer oaths, *subpoena witnesses*, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter." Iowa Code §19A.17 (1999)(emphasis added).

Racing and Gaming Commission - This commission is empowered to investigate violations of the racing and gaming regulations in Iowa. Iowa Code §99D.7(8). The commission may "issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of books records and other pertinent documents in accordance with chapter 17A, and to administer oaths and affirmations to the witnesses, when, in the judgment of the commission, it is necessary to enforce this chapter or the commission rules." §99D.7(15). This is a broad grant of subpoena power clearly encompassing the conduct of an investigation.

Banking Superintendent - This agency may make "examinations" of every bank and trust company in the state. Iowa Code §524.217 (1999). The Superintendent and upon approval individual bank examiners "have the power to subpoena witnesses, to compel their attendance, to administer an oath, to examine any person

under oath and to require the production of any relevant books or papers. Such examination may be conducted on any subject relating to the duties imposed upon, or powers vested in, the superintendent under the provisions of this chapter." §524.214. Thus in conducting an investigative bank "examination" the superintendent has the authority to subpoena witness testimony if he so desires.

Savings and Loan Division - The superintendent of savings and loans has general supervision over all savings and loans in Iowa. The code provides that the superintendent and his examiners "shall have full access to all books and papers of an association which relate to its business, and to books, records, and papers which relate to its business, and to books, records, and papers kept by an officer, director, agent, or employee relating to, or upon which any record of its business is kept, and may summon witnesses and administer oaths in the examination...." Iowa Code §534.403 (1999). Again this power is in connection with examinations (which are in the nature of inspections or investigations) and not pursuant to a public hearing.

Office of Consumer Advocate - This office "investigate[s] the legality of all rates, charges, rules, and practices of all persons under the jurisdiction of the utilities board..." Iowa Code §475A.2(1) (1999). This includes "all pipelines and all lines for the transmission, sale, and distribution of electrical current..." Iowa Code §474.9 (1999). "In any such investigation, the person action for the office of the consumer advocate shall have the power to ask the board to issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers books documents, at the discretion of the board." Iowa Code §475A.2(1) (1999) (emphasis added). Thus the utilities board is empowered to issue investigative subpoenas to compel the testimony of witnesses.

Labor Commissioner - In enforcing the OSHA laws the labor commissioner can conduct inspections and investigations. "In making inspections and investigations under this chapter, the commissioner may require the attendance and testimony of witnesses and the production of evidence under oath." Iowa Code §88.6(2) (1999). It is of particular interest that the OSHA chapter prohibits discrimination against an employee "because the employee has filed a complaint or instituted or caused to be instituted a proceeding under or related to this chapter..." Iowa Code §88.9(3) (1999). Employees who feel they have been discriminated against for asserting OSHA rights may file a complaint with the Commissioner. The commissioner is directed to "conduct an investigation". Iowa Code §88.9(3). Such an investigation is clearly an "investigatio[n]" under this chapter" for the purposes of §88.6(2). Thus the labor commissioner has the power to subpoena witnesses to investigate whether an employee was discriminated against for asserting OSHA rights but the Civil Rights Commission cannot subpoena witnesses to investigate if that employee was discriminated against for his race!

Division of Insurance - The department of Insurance conducts examinations of various types of companies engaged in the business of insurance. "The commissioner or any of the commissioner's examiners may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination." Iowa Code §507.3(3); see also §515.133; 508.16 (1999).

Citizen's Aide / Ombudsman - The Ombudsman investigates complaints from any source concerning any administrative action of any state agency. The Ombudsman may "[i]ssue a subpoena to compel any person to appear, give sworn testimony, or produce documentary or other evidence relevant to a matter under inquiry." Iowa Code §2C.9(4) (1999). There is no doubt that "inquiry" refers to an Ombudsman investigation and not a public hearing - the Ombudsman is not empowered to hold public hearings.

Iowa Civil Rights Commission - In housing discrimination cases only the Iowa Civil Rights Commission is empowered to "issue subpoenas and order discovery as provided by this section in aid of investigations and hearings of alleged unfair and or discriminatory housing or real property practices. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court." Iowa Code §216.5(13) (1999).

Local

Cities in Iowa are empowered to establish and prescribe the duties of administrative agencies. Iowa Code §392.1 (1999). In addition, "[a]ny officer or board authorized to hear evidence shall have authority to subpoena witnesses and compel them to attend and testify in the same manner as officers authorized to take depositions." Iowa Code §622.81. Based on these two code sections the Attorney General has opined that "a city council can enact a Civil Rights ordinance which includes subpoena powers both for investigation and for hearing for the agency charged with carrying out the mandate of the ordinance." 1976 Op. Att'y Gen. P. 574 (5/19/76 Conlin to Doyle). It would be too lengthy to catalog all the local agencies, not just Civil Rights locals, which could under this opinion have investigative subpoena power over witnesses. It is sufficiently ironic to point out that although the state Civil Rights Commission has no power to subpoena witnesses at investigation a number of cities in Iowa have conferred this power on their local city civil rights commissions.

FEDERAL

EEOC - The EEOC has the ability to subpoena witnesses during an investigation because Title VII refers to the NLRB subpoena power in order to confer that power on the EEOC. "For the purposes of all and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 [which is §11 of the NLRA] shall apply." 42 U.S.C. §2000e-9. As discussed above §11 of the NLRA grants the NLRB the power to subpoena witnesses at the investigation stage. This power is extended to EEOC by Title VII. Pursuant to this grant the EEOC has passed regulations governing its investigations that allows the commission to issue a subpoena requiring "the attendance and testimony of witnesses". 29 CFR §1601.16.

HUD - The Fair Housing Act empowers HUD, when investigating allegations of discrimination in housing to "issue subpoenas and order discovery in aid of investigations and hearings". 42 U.S.C. §3611(a). This discovery is the same discovery as could be had in a lawsuit in federal district court. *Id.* Thus deposition testimony can be taken during a HUD investigation. See 24 CFR §103.215.

NLRB - Since its inception the NLRB has had the power to subpoena witnesses at the investigation stage. The statutory source for this power is:

The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony or witness or the production of any evidence in such proceedings or investigation requested in such application.

29 U.S.C. §11(1)(emphasis added). see also 48 Am.Jur.2d Labor and Labor Relations §§1341-42 (1979); Hannah v. Larche, 363 U.S. 420, 4 L.Ed. 1307, 1332 (1960). According to the General Counsel of the NLRB the Board has had the power to subpoena witnesses at investigation since the inception of the agency. See Attached Letter From General Counsel for NLRB.

Conclusion

In seeking the ability to subpoena witnesses at investigation the Commission is not seeking an extraordinary power. Many federal, state and local agencies have had this power conferred upon them. The federal agencies most similar to the Commission - EEOC and HUD - both have the power to subpoena witnesses while they investigate charges of discrimination. Several local civil rights commissions also can subpoena witnesses at investigation. Ironically, if a sexual harassment charge is brought by a state employee the Department of Personnel could subpoena witnesses during its investigation but the Civil Rights Commission could not. Similarly, the labor commissioner has the power to subpoena witnesses when investigating whether someone has been discriminated against for asserting OSHA rights but the Civil Rights Commission does not have such a power when investigating race discrimination. And with cities such as Iowa City if a discrimination charge is investigated at the local level the agency could subpoena witnesses, if it were investigated at the federal level the EEOC could subpoena witnesses, but if it were investigated by the state commission there is no power to subpoena witnesses. The Civil Rights Commission has had investigative subpoena power in housing discrimination cases for almost a decade. Through its careful and occasional exercise this power has proved itself a boon to the Commission, the Respondents, and the Complainants. There is no reason to believe that the ability to subpoena witnesses at the investigation in other types of discrimination cases will have anything but a positive effect on how Respondents and Complainants experience a Commission investigation.

House Study Bill 74

SENATE/HOUSE FILE
BY (PROPOSED CITIZENS' AIDE/
OMBUDSMAN BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Approved
Vote: Ayes _____ Nays _____

A BILL FOR

1 An Act relating to the Iowa civil rights Act by expanding the
2 public accommodations protections of the Act to include
3 correctional facilities.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1277DP 81
6 rh/pj/5

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1 1 Section 1. Section 216.2, subsection 12, unnumbered
1 2 paragraph 2, Code 2005, is amended to read as follows:
1 3 "Public accommodation" includes each state and local
1 4 government unit or tax-supported district of whatever kind,
1 5 nature, or class that offers services, facilities, benefits,
1 6 grants or goods to the public, gratuitously or otherwise.
1 7 "Public accommodation" also includes each jail or other penal,
1 8 correctional, or detention facility of the state or a
1 9 political subdivision of the state and each community-based
1 10 correctional program of a judicial district department of
1 11 correctional services. This paragraph shall not be construed
1 12 by negative implication or otherwise to restrict any part or
1 13 portion of the pre-existing definition of the term "public
1 14 accommodation".

EXPLANATION

1 15 This bill amends the Iowa civil rights Act by expanding the
1 16 definition of "public accommodation" to include jails and
1 17 other penal, correctional, and detention facilities of the
1 18 state and its political subdivisions. Community-based
1 19 correctional programs are also included in the definition.
1 20 The Iowa civil rights commission has jurisdiction over
1 21 unfair and discriminatory practices with respect to public
1 22 accommodations.
1 23 LSB 1277DP 81
1 24 rh/pj/5

PART II. (from 2005)

LIST ALL ASSUMPTIONS USED IN OBTAINING ESTIMATES: (List clearly and in detail).

Assuming 1600 annual complaints to the Ombudsman's office, compared to our 2000 annual complaints, we may have to increase our resources by as much as 80%. This is an estimate and admittedly may need to be adjusted. If the 1600 complaints is too high of an estimate, numbers could be proportionately adjusted. Earlier fiscal notes projected the need to increase investigators by 5. That may be accurate. However, we would also need to increase: intake staff by 1 ½ to 2 staff; screening by 1 ½ to 2 staff; mediation by ½ to 1 staff; and docketing/closures by 1 ½ to 2 staff. Thus, total staff increase would approach 10 to 11 staff. In addition, we would need to acquire IT services and hardware for the additional 10+ staff – computers, phones-both new phones, new wiring, and new phone mail system, IT monthly costs.

We also would need to rent space. Due to layoffs and unfilled vacancies, we only have 1 to 2 vacant cubbyholes on first floor South Grimes.

PART III.

CALCULATION OF ESTIMATES:

10 staff could result in \$500,000 to \$600,000 in annual salary. IT, including computers and phones, could approach \$20-\$30,000. I have not included the need for additional printers and copiers which would be necessitated by the additional staff. Space costs have not been projected as of the date of this note.

PART IV.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE EXPENDITURES.

Indeterminate. If local agencies were required to investigate charges involving jails or prisons, they would incur costs.

PART IV.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

An added issue is that any underfunding has a significant short and long term impacts on our federal contracts. While we contract with HUD and EEOC to do the mandatory intake and investigation of housing and employment cases, we are reimbursed on a per case basis. Shortfalls in one fiscal year, especially due to short staffing, creates greater short falls in the following years. Unlike HUD and EEOC, public accommodation cases would not draw down any federal dollars.

However, given how short staffed we are now, the other implication is that our backlogs would increase. Backlogs would affect the entire agency. EEOC and HUD have instituted new, stricter deadlines for investigating

cases--failure to meet deadlines risks loss of federal funds. And no complainant, nor respondent, would receive justice.

PART VI.

CONFLICTS WITH EXISTING LAW

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